

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:21-CR-16
	§	
E.I. DU PONT DE NEMOURS AND CO.	§	
and	§	
KENNETH J. SANDEL	§	

**SUPPLEMENTAL STATEMENT ON RISK OF TWO TRIALS
FOLLOWING HEARING ON JULY 29
AND MOTION TO STAY TRIAL PENDING
EXPEDITED APPEAL OF DISMISSED COUNTS**

Counsel wishes better to articulate the “case management” answer that arose at the zoom hearing on July 29.

First, the Defendants, like the Court, do not want to try this case twice. The fairest way to avoid that risk is to *stay* the undismissed count(s) and allow an expedited appeal of the dismissed one(s). One of two things will happen: Either (1) the Court of Appeals will affirm the dismissal or (2) in the case of a remand, at least we may get clarification of the meaning of the vague and ambiguous terms in counts one and two. Otherwise, we will try the case with uncertainty about what the law forbids and what jury instruction to give – because the allegations are at best vague and ambiguous and would benefit from appellate review. If the Court orders a trial now on all three counts, and there is a conviction that then gets remanded on appeal, that is what will create the second trial –

because there is no assurance that the government at that point would dismiss the remanded count.

Second, since the Order of Dismissal, and the government's notice of appeal to the Fifth Circuit, we put "pencils down" on trial preparation precisely because we expected that the Court would not want to schedule a partial trial while Count One was on appeal. In the interim, our Fall and Winter schedule has been filled with trials – including two with clients in custody (including one set for September in Beaumont, alleging counterfeit sales of pharmaceuticals, and a shorter one set for December in Dallas, alleging harboring).

For these and the other reasons in our briefs, we ask the Court to stay this trial and allow an expedited appeal on dismissed counts.

Respectfully submitted,

/s/ David Gerger

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CERTIFICATE OF SERVICE

I have filed this pleading with the Clerk of Court using the CM/ECF system, which will serve a copy on counsel of record.

/s/ David Gerger

David Gerger